

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

TRACEY OTTO MCCULLEN
DOROTHY JEAN PAPADAKOS

Debtors

CASE NO.:

13-02176-8-SWH

Chapter 7

NOTICE OF TRUSTEE'S MOTION IN AID OF DISTRIBUTION

The undersigned Trustee, by and through counsel, gives notice of the Trustee's Motion in Aid of Distribution attached hereto.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the Trustee's Motion in aid of Distribution or if you want the court to consider your views on the motion, then on or before **March 21, 2014**, unless otherwise ordered, you or your attorney must file with the court, pursuant to Local Rule 9013-1 and 9014-1, a written response, an answer explaining your position, and a request for hearing.

Pursuant to that Memorandum from Chief Bankruptcy Judge J. Rich Leonard, EDNC, dated February 24, 2005, attorneys practicing in the United States Bankruptcy Court for the Eastern District of North Carolina, including attorneys admitted pro hac vice, are required to file electronically all documents [including new bankruptcy petitions, motions, memoranda of law, and other pleadings, but excluding proofs of claim and documents to be placed under seal in accordance with Local Bankruptcy Rule 5005-4(6)]. Any documents required to be filed electronically pursuant to Local Bankruptcy Rule 5005-4(1) but presented in paper form on or after April 1, 2005, shall be accompanied by an application for an exemption from this rule and a proposed order granting the relief sought. The application shall state the reason(s) why electronic filing would impose an extreme hardship on the attorney. Local Bankruptcy Rules pertaining to electronic filing, including Local Bankruptcy Rules 5005-4(1) and 5005-4(2) may be found on the Court's website www.nceb.uscourts.gov. Electronic filing may be done through the Court's web site. The Court's mailing address is at:

Clerk, U.S. Bankruptcy Court
Eastern District of North Carolina
PO Box 791
Raleigh, NC 27602

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

Marjorie K. Lynch, Esquire Bankruptcy Administrator 434 Fayetteville Street Suite 540 Raleigh, NC 27601	James B. Angell Chapter 7 Trustee Post Office Box 12347 Raleigh, North Carolina 27605
Algernon L. Butler, III Butler & Butler, LLP PO Box 38 Wilmington, NC 28402	Tracy Otto McCullen 8212 Bald Eagle Lane Wilmington NC 28411
Dorothy Jean Papadakos 8212 Bald Eagle Lane Wilmington, NC 28411	

If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the motion at a date, time and place to be later set and all parties will be notified accordingly.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

DATED: February 25, 2014



James B. Angell
North Carolina State Bar No. 12844
Howard, Stallings, From & Hutson, PA
Post Office Box 12347
Raleigh, North Carolina 27605
Telephone: 919-821-7700
Facsimile: 919-821-7703

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TRUSTEE'S MOTION IN AID OF DISTRIBUTION

NOW COMES James B. Angell, chapter 7 trustee for Tracey Otto McCullen and Dorothy Jean Papadakos (the "Trustee"), by and through counsel, and moves this Court enter for an order in aid of distribution to establish the relative rights and priorities of Chapter 7 claimants to certain property of the estate. In support of said Motion, the Trustee shows unto the Court the following:

1. On or about April 4, 2013, ("Petition Date"), Tracey Otto McCullen and Dorothy Jean Papadakos ("Debtors") filed a Chapter 7 bankruptcy petition in this Court.
2. James B. Angell was appointed Chapter 7 Trustee for the Debtors' bankruptcy case by order of the Court.
3. The Court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.
4. Venue is appropriate in this Court pursuant to 28 U.S.C. §§1408 and 1409.
5. This proceeding is a core proceeding under 28 U.S.C. §157(a)(2)(A) and (O).
6. The assets of the estate are generally comprised of the proceeds of
 - a. Property held as tenancy by the entireties located at 1801 Allens Lane, Wilmington, NC (\$124,852.44)(the "Real Estate Proceeds"); and
 - b. Three storage units and rights in Wrightsville Beach Storage held in the joint names of the Debtors (\$1,500.00)(the "Storage Units Proceeds").
7. Neither of the Debtors claimed a tenancy by the entireties exemption in the property located at 1801 Allens Lane, Wilmington, NC or the Real Estate Proceeds.
8. The Trustee proposes to first apply the Storage Units Proceeds, then the Real Estate Proceeds to make distributions in accordance with the priorities set out in 11 U.S.C. §726, retroactive to the Petition Date.

9. Although neither Debtor asserted an exemption based on tenancy by the entirety in 1801 Allens Lane, Wilmington, NC or the Real Estate Proceeds, the Trustee proposes to make distribution of the Real Estate Proceeds solely to creditors having joint claims against the Debtors.
10. Tenancy by the entirety is a form of ownership available between husband and wife. In North Carolina, tenancy by the entirety is comprised of five essential characteristics, unity of time, unity of title, unity of interest, unity of possession and unity of the person. Combs v. Combs, 273 N.C. 462, 160 S.E.2d 308 (1968). “The estate rests upon the doctrine of the unity of the person, and upon the death of one the whole belongs to the other, not solely by right of survivorship, but also by virtue of the grant which vested the entire estate in each grantee.” Davis v. Bass, 188 N.C. 200, 124 S.E. 566 (1924). Neither spouse can convey his or her interest in the estate without the other spouse. *Id.* See also Worrells v. North Carolina Farm Bureau Mut. Ins. Co., 103 N.C.App. 69, 404 S.E.2d 188 (1991). Thus, under North Carolina law, neither spouse holds an individual or separate interest in property held as tenants by the entirety, rather, “each is deemed to be seized of the whole, and not of a moiety or any undivided portion thereof.” Carter v. Continental Insurance Co., 242 N.C. 578, 579, 89 S.E.2d 122, 123 (1955) (*quoting Davis v. Bass*, 188 N.C. at 203, 124 S.E. at 568). Neither spouse may encumber the property without the written joinder of the other spouse. N.C. Gen.Stat. § 39–13.6. Accordingly, real property owned as tenants by the entirety in North Carolina is not subject to a claim by a creditor against only one spouse. Grabenhofer v. Garrett, 260 N.C. 118, 120, 131 S.E.2d 675, 677 (1963).

11. The Trustee has made distributions to date as follows:

a. Administrative claims –	
i. Bank Fees	\$ 853.04
ii. Bond payments	\$ 151.32
iii. Broker fees	\$13,000.00
iv. Exemption	\$ 2,070.04
Total:	\$16,074.40

12. The Trustee presently has \$110,251.04 on hand for distribution.

13. The Trustee seeks an order in aid of distribution in this case in order to provide guidance to him in making a final distribution in this case.

Wherefore, the Trustee respectfully prays for the following relief:

1. That the Court enter an order in aid of distribution finding that, based upon the facts in this case,
 - a. The Trustee may apply first the Storage Unit Proceeds, then the Real Estate Proceeds to make distributions in accordance with the priorities set out in 11 U.S.C. §726, retroactive to the Petition Date; and

- b. Although neither Debtor asserted an exemption based on tenancy by the entireties for 1801 Allens Lane, Wilmington, NC, the Trustee shall make distribution of the Real Estate Proceeds solely to creditors having joint claims against the Debtors; and
- c. That the Trustee may rely on the order in aid of distribution in making a final distribution in this case; and

2. That the Court grant such other and further relief that the Court deems just and proper.

DATED: February 25, 2014



James B. Angell
North Carolina State Bar No. 12844
Howard, Stallings, From & Hutson, PA
Post Office Box 12347
Raleigh, North Carolina 27605
Telephone: 919-821-7700
Facsimile: 919-821-7703

UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that she is over eighteen (18) years of age and the **TRUSTEE'S MOTION IN AID OF DISTRIBUTION AND NOTICE THEREOF** was this day served upon the below named persons, parties and/or counsel by mailing, postage prepaid, first class mail, a copy of such instruments to such persons, parties and/or counsel at the address shown below:

See Attached Matrix

Dated: February 25, 2014



Carly S. Coe, Paralegal
Howard, Stallings, From & Hutson, PA
Post Office Box 12347
Raleigh, NC 27605-2347
Telephone: (919) 821-7700
Facsimile: (919) 821-7703

Label Matrix for local noticing
0417-8
Case 13-02176-8-SWH
Eastern District of North Carolina
Wilson
Tue Feb 25 13:57:03 EST 2014

American Express
Attn: Managing Officer/Agent
PO Box 8218
Mason, OH 45040-8218

James B Angell
Howard, Stallings, From & Hutson, PA
PO Box 12347
Raleigh, NC 27605-2347

Barclays Bank Delaware
Attention: Bankruptcy
PO Box 1337
Philadelphia, PA 19101

Algernon L. Butler III
Butler & Butler, L.L.P.
P. O. BOX 38
Wilmington, NC 28402-0038

Cape Fear Turf Farm
Attn: Managing Officer/Agent
1845 Elwell Ferry Road
Council, NC 28434-8623

Capital One/Best Buy
Attn: Managing Officer/Agent
PO Box 30253
Salt Lake City, UT 84130-0253

City of Wilmington Tax Collector
Attn: Managing Officer/Agent
PO Box 1810
Wilmington, NC 28402-1810

Deere & Company
PO Box 6600
Johnston, IA 50131-6600

Scott D. Fink
Weltman, Weinberg & Reis Co., L.P.A.
323 W. Lakeside Ave., Ste. 200
Cleveland, OH 44113-1099

Accident Fund Insurance Company
Attn: Managing Officer/Agent
200 N. Grand Ave.
PO Box 40790
Lansing, MI 48901-7990

Amerigas
Attn: Managing Officer/Agent
3246-A Hwy 42 421N
Wilmington, NC 28401

BP Mstrcrd c/o Hunter Warfield
Attn: Managing Officer/Agent
4620 Woodland Corp. Blvd
Tampa, FL 33614-2415

Patti H. Bass
Bass & Associates, P.C.
3936 E. Ft. Lowell Road, Ste. 200
Tucson, AZ 85712-1083

Kevin W. Butterfield
Haywood, Denny & Miller, L.L.P.
PO Box 51429
Durham, NC 27717-1429

Capital One NA
Attn: Managing Officer/Agent
PO Box 21887
Saint Paul, MN 55121-0887

Capital Recovery V, LLC
c/o Recovery Management Systems Corporat
25 SE 2nd Avenue Suite 1120
Miami FL 33131-1605

Craft American Hardware
Attn: Managing Officer/Agent
7002 Wrightsville Ave.
Wilmington, NC 28403-3627

(p)DELL FINANCIAL SERVICES
P O BOX 81577
AUSTIN TX 78708-1577

First Citizens Bank
Attn: Managing Officer/Agent
P.O. Box 1580
Roanoke, VA 24007-1580

Ally Financial
Attn: Managing Officer/Agent
PO Box 380901
Bloomington, MN 55438-0901

Amplex Nursery
Attn: Managing Officer/Agent
13100 34th Street N
Clearwater, FL 33762-4246

Bankruptcy Administrator
1760-B Parkwood Blvd.
Wilson, NC 27893-3588

Borrego Springs Bank
Attn: Managing Officer/Agent
7777 Alvarado Rd Ste 501
La Mesa, CA 91942-8281

CERASTES, LLC
C O WEINSTEIN AND RILEY, PS
2001 WESTERN AVENUE, STE 400
SEATTLE, WA 98121-3132

Capital One, N.A.
c/o Bass & Associates, P.C.
3936 E. Ft. Lowell Rd, Suite #200
Tucson, AZ 85712-1083

Carl & Deborah Bell
1181 Stanton Hill Road
Cameron, NC 28326-7903

David Zukerman
1709 Chestnut Street
Wilmington, NC 28405-2914

Ernie Horne
129 Darby Street
Wilmington, NC 28409-2308

(p)FIRST CITIZENS BANK TRUST COMPANY
P O BOX 25187
RALEIGH NC 27611-5187

First-Citizens Bank & Trust Company
100 East Tryon Road
Raleigh, NC 27603-3581

GBS Casa Dorada
Attn: Managing Officer/Agent
5600 SW 135th Ave. Ste 210
Miami, FL 33183-5101

Gardner Welty
Attn: Managing Officer/Agent
7006 Myrtle Grove Road
Wilmington, NC 28409-4809

Gecrb/Belk
Attn: Managing Officer/Agent
PO Box 965028
Orlando, FL 32896-5028

Gregory A Horne
129 Darby Street
Wilmington, NC 28409-2308

Harrell's LLC
Attn: Managing Officer/Agent
720 Kraft Road
Lakeland, FL 33815-3244

Home Depot Credit
Attn: Managing Officer/Agent
PO Box 790340
Saint Louis, MO 63179-0340

~~Howard, Stallings, From & Hutson, P.A.~~
~~PO Box 12347~~
~~Raleigh, NC 27605-2347~~

Infranet Technologies Group
Attn: Managing Officer/Agent
235 Government Center Drive Ste 200
Wilmington, NC 28403-6252

Internal Revenue Service
Attn: Managing Officer/Agent
Post Office Box 7346
Philadelphia, PA 19101-7346

JWD Trees, Inc.
Attn: Managing Officer/Agent
17091 Huffmaster Road
North Fort Myers, FL 33917-5953

James Kelly, CPA
Attn: Managing Officer/Agent
211 Racine Drive #201
Wilmington, NC 28403-8842

John Deere Financial
Attn: Managing Officer/Agent
PO Box 4450
Carol Stream, IL 60197-4450

Neil D. Jonas
Rogers Townsend & Thomas, PC
2550 W. Tyvola Road, Ste. 520
Charlotte, NC 28217-4551

Kevin W. Butterfield
Deere & Company
P.O. Box 6660
Attention Lindsay Schmitz
Johnston, IA 50131-6600

Christopher Scott Kirk
Office of the Bankruptcy Administrator
434 Fayetteville Street, Suite 640
Raleigh, NC 27601-1888

Lamont, Hanley & Assoc. Inc.
Attn: Managing Officer/Agent
1138 Elm Street POB 179
Manchester, NH 03101-1531

Lanier, Whaley & Craft
Attn: Managing Officer/Agent
1404 Commonwealth Drive Ste 200
Wilmington, NC 28403-1475

Law Office of Dean R. Davis
1508 Military Cutoff Rd. Ste 102
Wilmington, NC 28403-5730

Lowe's Credit Card
Attn: Managing Officer/Agent
PO Box 36955
Canton, OH 44735-6955

Marjorie K. Lynch
Bankruptcy Administrator
434 Fayetteville Street, Suite 640
Raleigh, NC 27601-1888

Tracy Otto McCullen
8212 Bald Eagle Lane
Wilmington, NC 28411-9307

Mercedes Benz Financial Services
Attn: Managing Officer/Agent
P.O. Box 961
Roanoke, TX 76262-0961

Mercedes-Benz Financial Services USA LLC
c/o BK Servicing, LLC
PO Box 131265
Roseville, MN 55113-0011

N2 Publications
Attn: Managing Officer/Agent
PO Box 10916
Wilmington, NC 28404-0916

NEC Financial
Attn: Managing Officer/Agent
250 Pehle Ave Suite 704
Saddle Brook, NJ 07663-5888

NEC Financial Services
250 Pehle Avenue
Suite 704
Saddle Brook, NJ 07663-5888

New Hanover County Tax Dept.
Attn: Managing Officer/Agent
PO Box 18000
Wilmington, NC 28406-7742

North Carolina Dept. of Revenue
Office Serv. Division Bankr. Unit
PO Box 1168
Raleigh, NC 27602-1168

Office Depot Credit Plan
Att: Managing Agent/Officer
PO Box 689020
Des Moines, IA 50368-9020

Oleander Oasis, LLC
c/o Tracy O. McCullen
8212 Bald Eagle Lane
Wilmington, NC 28411-9307

Dorothy Jean Papadakos
8212 Bald Eagle Lane
Wilmington, NC 28411-9307

Phillips Nursery
Attn: Managing Officer/Agent
1082 Town Creek Rd NE
Leland, NC 28451-7368

Shanklin & Nichols, LLP
Attn: Managing Officer/Agent
214 Market Street PO Box 1347
Wilmington, NC 28402-1347

Shanklin & Nichols, LLP
P.O. Box 1347
Wilmington, NC 28402-1347

Shell Fleet Card
Attn: Managing Officer/Agent
P.O. Box 183019
Columbus OH 43218-3019.

Small Business Administration
Att: Managing Agent/Officer
6302 Fairview Rd., Suite 300
Charlotte, NC 28210-2234

Southeast Toyota Finance
Attn: Managing Officer/Agent
PO Box 70832
Charlotte, NC 28272-0832

(p) SPRINT NEXTEL CORRESPONDENCE
ATTN BANKRUPTCY DEPT
PO BOX 7949
OVERLAND PARK KS 66207-0949

T. McCullen & Company, Inc.
dba Landscapes Unique
6020 Oleander Drive
Wilmington, NC 28403-4720

Tidal Wave Construction
Attn: Managing Officer/Agent
413 Clarendon Blvd.
Carolina Beach, NC 28428-5002

Benjamin E.F.B. Waller
Ward and Smith, PA
PO Box 8088
Greenville, NC 27835-8088

Ward & Smith, PA
Att: Ryal W. Tayloe
PO Box 7068
Wilmington, NC 28406-7068

Ward & Smith, PA
Attn: Kimberly Lee
PO Box 8088
Greenville, NC 27835-8088

Wells Fargo
Attn: Managing Officer/Agent
1 Home Campus
Des Moines, IA 50328-0001

Wells Fargo
Attn: Managing Officer/Agent
800 Walnut Street
Des Moines, IA 50309-3891

Wells Fargo Bank NA
PO Box 10438
Des Moines IA 50306-0438

Williams Overman Pierce, LLP
2501 Atrium Drive
Suite 500
Raleigh, NC 27607-6492

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Dell Business Credit
Attn: Managing Officer/Agent
PO Box 5275
Carol Stream, IL 60197-5275

First Citizens Bank
Attn: Managing Officer/Agent
P.O. Box 25187
Raleigh, NC 27611-5187

Sprint
Attn: Managing Officer/Agent
PO Box 4181
Carol Stream, IL 60197-4181

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) James B Angell
Howard, Stallings, From & Hutson, PA
PO Box 12347
Raleigh, NC 27605-2347

(u) Bankruptcy Administrator

(u) Faye Brock